Donna Conkling

From: Dan hochvertdan.hochvert <danghochvert@gmail.com>
Sent: Monday, April 30, 2018 11:34 AM
To: Clerk's Department
Subject: Re: FW: Jane Curley (Correction)

Josh
Since the Personnel Committee is in executive session when dealing with personal issues, it would be inappropriate for me to discuss any of the decisions made by that Committee.
Dan

On Mon, Apr 30, 2018 at 9:20 AM, Clerk's Department <clerk@scarsdale.com> wrote:

From: Josh Frankel [mailto:j_frankel@me.com]
Sent: Saturday, April 28, 2018 8:41 PM
To: Clerk's Department <clerk@scarsdale.com>
Subject: Fwd: Jane Curley (Correction)

It just dawned on me that I should have referenced the Board of Assessment Review, not Architectural Review, a sloppy oversight. I apologize for the error.

Looking forward to hearing from you,

Josh Frankel

j_frankel@me.com

Begin forwarded message:

From: Josh Frankel <j_frankel@me.com>

Subject: Jane Curley

Date: April 27, 2018 at 11:05:01 AM EDT

To: Clerk's Department <clerk@scarsdale.com>

Mayor Hochvert:

I have read about (Scarsdale Inquirer, April 13, 2018) the decision made by the Personnel Committee not to ask Jane Curley back to the Board of Architectural Review (BAR) on which, according to her colleagues on that Board, she has done an outstanding job. Letters to the Editor of the Inquirer and commentary to the Board at recent meetings (particularly those by BAR Chair Bob Berg) have been extremely supportive of Jane's work. Personally, I got to know Jane in the aftermath of the Ryan reval, and found her to be thoroughly versed in the world of quantitative analysis; indeed, it's what she actually does for a living.

As a consequence of this inexplicable decision, there is much curiosity in the community about why Jane was shunned and whether, since she was a supporter of the Voters Choice Party, there were political undertones. It is my understanding that inquiries have been made as to the reason(s) for Ms. Curley's exclusion, and the response has been that the decision was made during Executive Session and therefore disclosure is "prohibited" (a word I know has been used).

So, let's be clear about one thing: There is no "prohibition" against a public body disclosing the nature of discussions that take place during Executive Session. While those discussions can be privileged, there is no requirement that they remain privileged. Below are excerpts from three readily available Advisory Opinions (AO) from the NY State Committee on Open Government (COOG). I would note the "presumption of openness" and "permissive" nature of the Open Meetings Law. I have confirmed this with a staff attorney of the Committee. I would note, most importantly, the language in the final AO that an "agency may choose to disclose records even though the authority to withhold exists."

If there was a valid reason for the Personnel Committee to shun an exceptional volunteer like Jane Curley, it is my opinion that the Board owes the community an explanation and should not continue hiding behind the Executive Session provision of the OML. At the very least, it must not be the Board's position that it is somehow "prohibited" from disclosing those deliberations, as that is simply untrue.

Thank you.

Regards,

Josh Frankel

OML-AO-4621

First, as a general matter, the Open Meetings Law is based upon a presumption of openness. Stated differently, meetings of public bodies must be conducted open to the public, unless there is a basis for entry into executive session. Moreover, the Law requires that a procedure be accomplished, during an open meeting, before a public body may enter into an executive session.

OML-AO-4091

Based on the foregoing, although a matter may be discussed in executive session, there is no requirement that it must be discussed in executive session. In this regard, both the Open Meetings Law and the Freedom of Information Law are permissive. While the Open Meetings Law authorizes public bodies to conduct executive sessions in circumstances described in paragraphs (a) through (h) of §105(1), there is no requirement that an executive session must be held even though a public body has the right to do so. If, for example, a motion is made to conduct an executive session for a valid reason, and the motion is not carried, the public body could either discuss the issue in public, or table the matter for discussion in the future. Similarly, although the Freedom of Information Law permits an agency to withhold records in accordance with the grounds for denial of access, it has been held by the Court of Appeals, the state's highest court, that the exceptions are permissive rather than mandatory, and that an agency may choose to disclose records even though the authority to withhold exists [Capital Newspapers v. Burns], 67 NY 2d 562, 567 (1986)].

AO 2869 (April 6, 1998)

Lastly, although a matter may be discussed in executive session, there is no requirement that it must be discussed in executive session. In this regard, both the Open Meetings Law and the Freedom of Information Law are permissive. While the Open Meetings Law authorizes public bodies to conduct executive sessions in circumstances described in paragraphs (a) through (h) of §105(1), there is no requirement that an executive session be held even though a public body has right to do so. The introductory language of §105(1), which prescribes a procedure that must be accomplished before an executive session may be held, indicates that a public body "may" conduct an executive session only after having completed that procedure. If, for example, a motion is made to conduct an executive session for a valid reason, and the motion is not carried, the public body could either discuss the issue in public, or table the matter for discussion in the future. Similarly, although the Freedom of Information Law permits an agency to withhold records in accordance with the grounds for denial, it has been held by the Court of Appeals that the exceptions are permissive rather than mandatory, and that an agency may choose to disclose records even though the authority to withhold exists [Capital Newspapers v. Burns], 67 NY 2d 562, 567 (1986)].